

RECEIVED  
SEP 13 1998  
FCC MAIL ROOM

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
GTE Telephone Operating Companies	)	CC Docket No. 98-79
GTOC Tariff FCC No. 1	)	REPLY OF THE PUBLIC
GTOC Transmittal No. 1148	)	UTILITY COMMISSION
	)	OF OREGON

1. Introduction

The Public Utility Commission of Oregon (OPUC) appreciates the opportunity to submit comments concerning GTE Telephone Operating Companies' (GTE) interstate tariff filing GTOC Tariff FCC No. 1 (Tariff) for the provision of "Asymmetrical Digital Subscriber Line" (ADSL) service. This is an issue of great importance in Oregon.

The OPUC oversees and regulates the provision of telecommunications service in Oregon. GTE's subsidiary affiliate, GTE Northwest Incorporated (GTE-NW), is a regulated telecommunications utility in Oregon. GTE currently is providing ADSL service under the Tariff to Oregon customers.

The OPUC recently opened a docket to investigate GTE's provisioning of ADSL service in Oregon (OPUC Docket No. UM 907). The OPUC's comments here are thus limited by the fact that all matters related to GTE's ADSL offering are officially under investigation. However, the OPUC welcomes the opportunity to

PAGE 1 - REPLY OF THE PUBLIC UTILITY COMMISSION OF OREGON

DEPARTMENT OF JUSTICE  
1162 Court Street N.E.  
Salem, OR 97310  
(503) 378-4620

No. of Copies rec'd  
List A B C D E

046

1 provide the FCC with information from Oregon's perspective about  
2 the jurisdictional issue under consideration in the Federal  
3 Communications Commission's (FCC) CC Docket No. 98-79.

4       **2. The OPUC recently addressed issues surrounding USWC's**  
5       **similar "Megabit" ADSL filing.**

6       In March 1998, U S WEST Communications, Inc. (USWC) filed a  
7 tariff with the OPUC for a new ADSL service called "MegaBit  
8 Services." Like GTE-NW, USWC is a regulated telecommunications  
9 utility in Oregon. Unlike GTE-NW, in filing its Megabit tariff  
10 with the OPUC, USWC basically conceded that its Megabit service  
11 offering was, in whole or in part, an intrastate service. The  
12 OPUC considers ADSL service to be a regulated telecommunications  
13 service, at least when it is offered by a telecommunications  
14 utility.

15       Megabit essentially is two services: (1) a MegaCentral  
16 service sold to internet service providers (ISPs) and (2) a  
17 MegaSubscriber service sold to end users. The OPUC suspended the  
18 USWC Megabit tariff for up to six months and commenced an  
19 investigation (docketed as UT 144).

20       To facilitate the investigation, the OPUC staff conducted a  
21 series of workshops. Representatives of USWC, USWC's unregulated  
22 affiliate Interprise America (which offers internet access under  
23 the name USWEST.net), competitive local exchange carriers, and  
24 OPUC staff attended the workshops. Staff and a number of  
25 participants were particularly concerned that USWC would use its  
26 ///

1 relationship with Interprise America to steer internet users  
2 desiring ADSL service to USWEST.net.

3 The issues the OPUC staff considered during the  
4 investigation included:

5 1. Will USWC favor USWEST.net when it provisions  
6 MegaCentral lines (will USWC be able to provision  
7 independent ISP orders)?

8 2. When customers contact USWC regarding Megabit service,  
9 will USWC attempt to persuade customers currently taking  
10 service from an unaffiliated ISP to switch to USWEST.net (a  
11 practice known as "unhooking" under OPUC rules).

12 3. Are the proposed prices for the various elements of  
13 MegaBit service reasonable?

14 4. Is USWC attempting to steer ISP users to USWEST.net by  
15 making required modems or other necessary equipment, which  
16 potentially do not conform to industry standards,  
17 prohibitively expensive for independent ISPs or their  
18 customers to acquire?

19 5. Can the OPUC be assured that expenses related to the  
20 joint marketing of MegaSubscriber and regulated services,  
21 promotions by Interprise America, and the installation of  
22 MegaSubscriber by Interprise America will not be borne by  
23 USWC customers?

24 6. Is USWC willing to cooperate with independent ISPs in  
25 the areas of MegaBit testing and technical support?

26 ///

1       The OPUC and USWC ultimately resolved most of these issues  
2 through the OPUC's approval of a Memorandum of Understanding with  
3 USWC. Significantly, the OPUC's approval included a staggered  
4 introduction of the MegaBit Services. That is, the OPUC allowed  
5 USWC to begin provisioning MegaCentral orders to ISPs on July 8,  
6 1998, but delayed USWC's ability to offer MegaSubscriber to end  
7 users until the OPUC was satisfied that USWC had made reasonable  
8 progress toward provisioning MegaCentral lines to independent  
9 ISPs.

10       USWC further agreed in part to (1) provide MegaSubscriber  
11 testing modems to ISPs ordering MegaCentral; (2) avoid  
12 "unhooking" customers of independent ISPs and use a marketing  
13 "safe harbor" for customers desiring MegaSubscriber with an ISP  
14 other than USWEST.net; (3) continue to support its MegaSubscriber  
15 technology through July 31, 2001; (4) update its part 64 manual;  
16 (5) provide technical material on DSL services and USWC's testing  
17 protocol to ISPs ordering MegaCentral; and (6) not give  
18 USWEST.net preferential treatment.

19       Due to provisioning problems (attributable at least in part  
20 to USWC's strike), and serious concerns about provisioning and  
21 testing raised by independent ISPs, the OPUC has delayed the  
22 rollout of Megasciber on three occasions. In light of these  
23 types of events, the FCC should carefully evaluate whether it has  
24 the resources to resolve disputes about the provisioning of ADSL  
25 service in a fair and nondiscriminatory manner.

26   ///

**PAGE 4 - REPLY OF THE PUBLIC UTILITY COMMISSION OF OREGON**

**DEPARTMENT OF JUSTICE  
1162 Court Street N.E.  
Salem, OR 97310  
(503) 378-4620**

1           3.    **GTE has an ISP affiliate. Consequently, the OPUC has**  
2                   **concerns about GTE offering ADSL in a fair and**  
                  **nondiscriminatory manner.**

3           Like USWC in its Megabit filing, GTE has an ISP affiliate  
4 (known as "GTE Internetworking"). Thus, the OPUC will likely  
5 investigate in its Docket UM 907 issues similar to those  
6 presented by USWC's Megabit filing. The OPUC will want to ensure  
7 that GTE's ADSL service is offered in a nondiscriminatory manner  
8 to other ISP competitors. For example, GTE states that its ADSL  
9 service is available only to ISPs which are interconnected to  
10 GTE's wire centers. Similarly, there may be some issues  
11 surrounding GTE's proposed provision and distribution to ISPs of  
12 the modems necessary for its ADSL service. **See also Petition of**  
13 **California Cable Television Association**, filed in FCC Docket CC  
14 98-79 (May 22, 1998).

15           4.    **The OPUC is concerned that, should the FCC find GTE's**  
16                   **ADSL to be an interstate service, the costs should be**  
                  **assigned consistent with the revenues.**

17           As a general matter, the jurisdictional assignment of costs  
18 should be consistent with the jurisdictional assignment of  
19 revenues. In the present proceeding, GTE assigns 75 percent of  
20 the local loop costs associated with ADSL to the intrastate  
21 jurisdiction using the general allocation factor for common  
22 lines, while all (100 percent) of the ADSL revenues would go to  
23 the interstate jurisdiction. This inconsistent allocation of  
24 costs and revenues exists even if the loops are used exclusively  
25 for ADSL service.

26    ///

1           If the FCC determines ADSL is an interstate service, then  
2 the jurisdictional assignment of loop costs and ADSL revenues  
3 should be revised so that they are consistently apportioned.

4           **5.   The public may be confused if GTE's ADSL service is to**  
5           **be deemed an interstate service.**

6           While not an overriding concern, it is probable that the  
7 public will be confused, at least for a time, over which agency  
8 has regulatory authority over ADSL service should the FCC find it  
9 to be an interstate service. Undoubtedly, customers with ADSL  
10 service problems initially will contact the OPUC for help. The  
11 OPUC will then need to refer these customers to the FCC. That  
12 will likely be frustrating to the customers, particularly in  
13 Oregon where USWC has chosen to file its ADSL service as an  
14 Oregon-tariffed service.

15           Thus, it seems that the FCC, should it find ADSL to be an  
16 interstate service, will want to pay close attention to ensure  
17 GTE's Tariff provides, for example, (1) requirements for the  
18 timely provision of service in a nondiscriminatory manner, (2)  
19 appropriate service quality standards, (3) a review of the  
20 proposed rates, and (4) mechanisms for resolving customer billing  
21 and other disputes.

22           **6.   GTE's Tariff presents difficult federal and state**  
23           **regulatory issues which require the FCC's careful**  
              **consideration.**

24           As stated, the OPUC has an open docket to consider all  
25 aspects of GTE's ADSL service offering, including its argument

26    ///

1 that ADSL is an interstate service. As such, the OPUC has not  
2 reached a final determination on any issues, including the  
3 jurisdictional nature of ADSL service. Nonetheless, the OPUC has  
4 questions about GTE's position, and equally serious concerns  
5 about the scope and implications of an FCC decision which agrees  
6 with GTE on this important issue.

7 As a starting point, it does not appear there is any  
8 dispute that ADSL service is not, in itself, "Internet access."  
9 ADSL is merely a broad bandwidth which seems to be ideal for  
10 Internet access. ADSL may be considered as nothing more than a  
11 "really fast" loop.

12 GTE's basic theme is based on the premise that anything  
13 that allows a hook-up to the Internet is, necessarily, interstate  
14 service. While the OPUC is not yet persuaded by this argument,  
15 acceptance of it carries potentially broad implications. Other  
16 parties have discussed, and the FCC is well-versed in, the  
17 potential application of its decision to the disputes involving  
18 ISPs and reciprocal compensation under interconnection  
19 agreements, and about the impact of any decision on the FCC's  
20 exemption for ISPs from access charges.

21 Further, the OPUC is concerned about how an FCC  
22 determination in favor of GTE-NW would affect the states' ability  
23 to regulate "dial-up" ISP service. For example, in a recent  
24 decision in **Southwestern Bell Telephone Company v. PUC of Texas**,  
25 MO-98-CAA3 (W.D.Texas, June 15, 1998) (**SWB v. PUC**), the court  
26 ///

1 found, in part, that "dial-up" ISP service (where the ISP's  
2 customer dials a seven-digit number over ordinary telephone lines  
3 to the ISP facility) is intrastate service, while the ISP's  
4 conversion of the customer's information into data packets, and  
5 sending them through the Internet, was an interstate service.  
6 Thus, the Texas court decision supports the notion that state  
7 regulation of "dial-up" ISP service is properly regulated by the  
8 states as an intrastate service. However, should the FCC find  
9 GTE's ADSL Tariff to be an interstate service, some will  
10 certainly argue that such a finding should also apply to dial-up  
11 ISP service.

12 Similarly, a finding by the FCC that ISPs are  
13 telecommunications carriers would affect how states regulate ISPs  
14 generally (currently, the OPUC does not require ISPs to obtain  
15 certificates as telecommunications carriers to provide their  
16 services). A similar issue, already presented by GTE's Tariff,  
17 is whether an ISP becomes a telecommunications carrier, requiring  
18 certification, if it buys ADSL service from GTE and sells it to  
19 end-users.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///




1        These, and other state regulatory concerns, are presented  
2 by GTE's ADSL Tariff. The OPUC urges the FCC to carefully and  
3 fully weigh all of the ramifications of its decision in this  
4 docket.

5        Dated this 17<sup>th</sup> day of September, 1998.

6                                Respectfully submitted,

7                                HARDY MYERS  
8                                Attorney General

9                                  
10                               Michael T. Weirich #82425  
11                               Assistant Attorney General  
12                               Of Attorneys for Public Utility  
                                 Commission of Oregon

13    MTW:\llm\mtw0967.ple

14

15

16

17

18

19

20

21

22

23

24

25

26

PAGE 9 - REPLY OF THE PUBLIC UTILITY COMMISSION OF OREGON

DEPARTMENT OF JUSTICE  
1162 Court Street N.E.  
Salem, OR 97310  
(503) 378-4620

## CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of September 1998, I served the foregoing Reply of the Public Utility Commission of Oregon upon the party (ies), hereto by mailing, regular mail, postage prepaid, a true, exact and full copy then depositing in the United States Post Office at Salem, Oregon, a full, true and correct copy thereof addressed to:

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge  
HQE03J27  
Irving, TX 75038

J. Manning Lee  
Teleport Communications Group, Inc  
Two Teleport Dr/Ste 300  
Staten Island, NY 10311

Frank W. Lloyd  
Donna N. Lampert  
Mintz Levin Cohn Ferris  
Glovsky & Popeo  
701 Pennsylvania Ave, NW/Ste 900  
Washington, DC 20004-2608

Edward A. Yorkgitis  
Jonathan E. Canis  
Kelley Drye & Warren  
1200 19th St, NW, Fifth Floor  
Washington, DC 20036

Alan Buzacott  
MCI Telecommunications Corp  
1801 Pennsylvania Ave, NW  
Washington, DC 20006

Cristy C. Kunin  
Blumenfeld & Cohen  
1615 M Street, NW, Ste 700  
Washington, DC 20036

Richard M. Rindler  
Swidler & Berlin, Chartered  
3000 K Street, NW  
Washington, DC 20007

Cheryl Callahan  
New York Public Service Commission  
2 Empire State Plaza  
Albany, NY 12223-1350

Richard J. Metzger  
Association for Local Telecommunications  
Services  
888 17th St, NW/Ste 900  
Washington, DC 20006

Laura Phillips  
Dow Lohnes & Albertson  
1200 New Hampshire Ave, NW/Se 800  
Washington, DC 20036

Barbara A. Dooley  
Commercial Internet eXchange Association  
1041 Sterling Rd/Ste 104A  
Herndon, VA 20170

Rodney L. Joyce  
Shook, Hardy & Bacon  
1101 Pennsylvania Ave, NW/Ste 800  
Washington, DC 20004-2615

Steven Gorosh  
Northpoint Communications  
222 Sutter Street  
San Francisco, CA 94108

Jane Jackson  
Chief, Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, NW, Room 518  
Washington, DC 20554

Judith A Nitsche  
Chief, Tariff & Price Analysis Branch  
Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, NW, Room 518  
Washington, DC 20554

Robert Pepper  
Federal Communications Commission  
1919 M Street, NW, Room 822  
Washington, DC 20554

Harold Furchtgott-Roth  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Michael K. Powell  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

Anatole Nagy  
ATU Telecommunications  
600 Telephone Ave, MS 8  
Anchorage, AK 99503

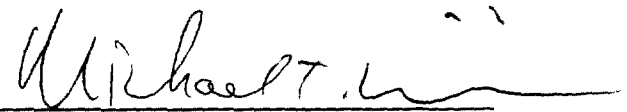
James D. Schlichting  
Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, NW, Room 518  
Washington, DC 20554

William E. Kennard  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Elliott Maxwell  
Federal communications Commission  
1919 M Street, NW, Room 822  
Washington, DC 20554

Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

Gloria Tristani  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554

  
Michael T. Weirich #82425  
Assistant Attorney General  
Of Attorneys for PUC Staff